

9

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. No.2904 OF 2002

New Delhi, this the 04<sup>th</sup> day of ~~Oct~~<sup>August</sup>, 2003

HON BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON BLE SHRI S.K. NAIK, MEMBER (A)

Vijendar Singh  
S/o Shri Ranbir Singh  
R/o 243, Police Colony,  
Ashok Vihar,  
Delhi

.... Applicant

(By Advocate: Shri Arun Bhardwaj)

Versus

1. Union of India  
Through Commissioner of Police  
Police Headquarters  
IP Estate, New Delhi

2. Joint Commissioner of Police  
New Delhi Range  
PHQ, I.P. Estate,  
New Delhi

.... Respondents

(By Advocate: Shri Harvir Singh)

**ORDER**

**JUSTICE V. S. AGGARWAL**

Applicant is a Sub Inspector in Delhi Police.  
He was served with the following charge:-

"You, SI Vijendar Singh, D/3258 are hereby charged that on 12.6.97, while posted as Sub-Inspr. at PS Gokalpuri, you had investigated case FIR No.426/97 u/s 363/366/368/372/376 IPC PS Gokalpuri wherein you had committed following lapses/misconduct by misusing official powers:

1) In the aforesaid case, accused Bheema and Laxmi were brought to the PS in the evening of 12.6.97, but you had arrested Bheema only and Laxmi was allowed to go scot free from the PS, despite being directed by Shri B.L. Meena ACP/Seelam Pur to arrest both of them. Thus, you disobeyed the orders of senior officers.





-2-

2) Recovery of Rs.10,000/- from your (I.O s) room at your instance established that you had accepted Rs.10,000/- for not arresting Laxmi as illegal gratification and engaged in corrupt practices.

The above act on your part amounts to grave misconduct, negligence, carelessness and dereliction in the discharge of your official duty, misuse of official powers and also an act unbecoming of a member of disciplined force and which renders you unfit for the police force & thus liable for departmental action under Delhi Police (Punishment & Appeal) Rules, 1980."

In pursuance of the said charge having been served, the disciplinary authority had imposed a penalty on the applicant of forfeiture of two years approved service permanently for a period of two years entailing proportionate reduction in his pay. He was not to earn increment during the period of reduction and on the expiry of that period, the reduction was to have the effect of postponing his future increment. He had preferred an appeal which had been dismissed on 19.8.2002. By virtue of the present application, the applicant seeks quashing of the orders passed by the disciplinary as well the appellate authority.

2. The facts alleged against the applicant were that one Padma was lured by one Bheema from her native place and was brought to Gokul Puri. The said Bheema raped her and later on she was sent to Kotha No.40 at G.B.Road which was run by the mother of Bheema i.e. Smt.Laxmi. At Kotha No.40, she was forced to submit to the illegal demands of Laxmi and Bheema and she was pressurised to indulge into

AS Ag



prostitution. On 12.6.1997, an information was received that a minor girl had been continuously subjected to rape and also forced to prostitution. A raid was conducted and Padma was recovered. On the statement of Padma, a First Information Report was registered. The investigation was entrusted to the applicant. In her statement, Padma is alleged to have stated that it was Bheema who kidnapped her and she was detained at Gokal Puri. The department's assertion was that the applicant arrested Bheema but not Smt.Laxmi and charged Rs.10,000/- as illegal gratification. On 13.6.1997 at 1.30 PM, Shri B.L.Meena, Assistant Commissioner of Police along with others had gone to the Police Station and had made enquiries. The assertions were also that despite a direction he had not arrested the mother of Bheema.

3. The inquiry officer had returned the findings against the applicant which led to the passing of the abovesaid penalty.

4. The learned counsel for the applicant contends that there was no evidence against the applicant and consequently the proceedings deserve to be quashed.

5. In the reply filed, the application has been contested. It is reiterated that there was material against the applicant. He had intentionally

12

-4-

not arrested the mother of Bheema. The findings, therefore, in this regard recorded by the inquiry officer on which the disciplinary and the appellate authorities acted were in accordance with law.

6. The principle in law is well-settled that this Tribunal while judicially reviewing the orders passed by the disciplinary authority or the administrative authority will not sit as a court of appeal, but if no reasonable person would come to such a finding or the findings are based on no evidence, interference would be called for. We take liberty in referring to a decision of the Apex Court in this regard in the case of **Apparel Export Promotion Council v. A.K. Chopra**, JT 1999 (1) SC 61. The Supreme Court held:-

" Once findings of fact, based on appreciation of evidence are recorded, the High Court in Writ Jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities.

Subsequently in the decision rendered in the case of **Yoginath D. Bagde v. State of Maharashtra & Anr.**, JT

*U Ag*



1999 (7) SC 62, the same principles were re-stated as under:-

"The law is well-settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter. In **Kuldeep Singh v. The Commissioner of Police & Ors.**, JT 1998(8) SC 603, this Court, relying upon the earlier decisions in **Nand Kishore v. State of Bihar**, AIR 1978 SC 1277 = (1978) 3 SCC 366 = (1978) 3 SCR 708; **State of Andhra Pradesh v. Sree Rama Rao** AIR 1963 SC 1723 = (1964) 3 SCR 25; **Central Bank of India v. Prakash Chand Jain** AIR 1969 SC 983; **Bharat Iron Works v. Bhagubhai Balubhai Patel & Ors.** AIR 1976 SC 98 = (1976) 2 SCR 280 = (1976) 1 SCC 518 as also **Rajinder Kumar Kindra v. Delhi Administration through Secretary (Labour) & Ors.** AIR 1984 SC 1805 = (1985) 1 SCR 866 = (1984) 4 SCC 635, laid down that although the court cannot sit in appeal over the findings recorded by the Disciplinary Authority or the Enquiry Officer in a departmental enquiry, it does not mean that in no circumstance can the court interfere. It was observed that the power of judicial review available to a High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and the Courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse."

Therefore, if there is no evidence against the applicant in this regard, or that no reasonable person would come to such a finding, in that event, the interference would be called for.

(12)

-6-

7. We have already reproduced above the charge that was framed against the applicant. It pertains to only 12.6.1997. On that date, Bheema and Smt.Laxmi were brought to the Police Station, but the applicant did not arrest Laxmi despite a direction of the Assistant Commissioner of Police and allegedly accepted Rs.10,000/- as illegal gratification for not arresting her.

8. It was asserted at the Bar that the applicant was in charge of the investigation only for the evening of 12.6.1997. The statement of the prosecutrix had been recorded on basis of which the First Information Report came into being. In the said report, it is claimed that there was no assertion against Smt.Laxmi, the mother of Bheema and, therefore, the question of arresting her did not arise and thus there was no question of charging illegal gratification for not arresting her.

9. The First Information Report in accordance with the Code of Civil Procedure (Section 154) is recorded on basis of the statement made by the prosecutrix or the complainant as the case may be. It sets the ball into rolling and the investigation proceeds thereafter. Our attention has not been drawn towards any investigation or supplementary statement of 12.6.1997 pertaining to which the charge had been framed that there were any assertions against Laxmi.

*BSA*

(R)

-70-

If subsequently any such evidence had been collected during the investigation, that would not be a ground or permission to arrest Laxmi on 12.6.1997. The purpose of framing of the charge is to let the delinquent know as to what assertions he has to meet. Therefore, ordinarily, the matter has to be examined in light of the charge that was framed.

10. During the course of submissions, the First Information Report was read over to show that it does not indicate that prosecutrix stated anything at that moment against Laxmi. That was the only material shown to be available with the Police Officer. The prosecutrix had only indicted Bheema who was arrested. If there was no allegation against Laxmi, the question of arresting her will not arise. The said conclusion gets fortified from the fact that in para 4.10 of the application, the applicant asserted:-

" That the inquiry officer without appreciating the fact that nothing material has come on record to frame charge against the applicant. It is very much on record and a bare perusal of FIR clearly shows that the complainant has not named Laxmi in her complaint made on 12.6.97 on the basis of which FIR as lodged and in the absence of the same Laxmi can't be arrested according to law and in other words the illegal directions of ACP B.L. Meena can't be carried out. A true copy of charge is attached herewith as Annexure A/6."

In reply, there is no specific denial that in the First Information Report which was recorded on

AG

18

-8-

12.6.1997, there was any allegation against Laxmi.

The respondents vaguely stated:-

"In reply to para 4.10 of the O.A. is wrong & denied and further submitted that in fact it has come on record that Laxmi at whose Kotha, Padma the prosecuted has been left at G.B. Road by Bheema is his mother (Bhima's mother) this fact clearly shows the collusion between Bheema and Laxmi vis a vis the liability of Laxmi also."

Similar is the position with respect of paragraphs 5.11 and 5.12 of the application. There is no denial that on 12.6.1997, there was any allegations made by the prosecutrix against Laxmi. As already pointed above, if subsequently any such material is available and there was evidence to arrest Laxmi that would not be dereliction of duty on the part of the applicant for which the charge was framed and in that view of the matter, the question of arresting Laxmi or charging of illegal gratification on that day would not arise.

11. When it is not alleged that the First Information Report was recorded incorrectly, we can safely conclude that there was no evidence against the applicant on 12.6.1997 to arrest Laxmi.

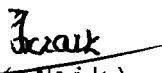
12. We make it clear that subsequently if there was any material available with the department for dereliction of duty against the applicant, the respondents may independently take an appropriate action.

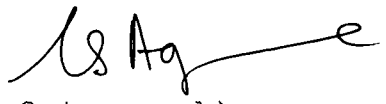


12

-9-

13. For these reasons, we allow the present application and quash the impugned orders. No costs.

  
(S.K. Naik)  
Member (A)

  
(V.S. Aggarwal)  
Chairman

U  
/sns/